

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus

Bankruptcy Judge

Modesto, California

July 31, 2000 at 9:00 a.m.

- 
1. 00-91852-A-7 RIAZ & GUALFROZE KHAN HEARING ON MOTION FOR  
HTP #1 RELIEF FROM AUTOMATIC STAY  
BANK OF LODI VS. PART II  
6/30/00 [6]

**Tentative Ruling:** The motion is denied. The motion is made pursuant to both 11 U.S.C. § 362(d)(1)&(2). The movant, who is secured by a leasehold interest and personal property comprising a gas station and mini-mart business, asserts that its collateral has no equity and the equity cushion is insufficient to adequately protect it. However, it has presented no admissible evidence regarding the value of its collateral. The statement in the declaration of Robert Daneke that the property has a value of \$780,000, is not admissible. Mr. Daneke is a bank officer with no demonstrated expertise in the valuation of real property or businesses. Fed.R.Evid. 702 requires that a witness offering expert testimony must first be shown to be qualified by knowledge, skill, experience, training or education. This was not done. Since the value of the collateral is the lynchpin of the motion and since the movant has the burden of proof on this issue, the motion is denied. 11 U.S.C. § 362(g)(1).

2. 00-95168-A-7 CHARLES EDWARD VOGEL HEARING ON MOTION FOR  
CCR #1 RELIEF FROM AUTOMATIC STAY  
PNC MORTGAGE CORPORATION VS. PART III  
7/20/00 [21]

**Tentative Ruling:** This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part III. If the debtor, the trustee, or any other party in interest appears in opposition to the motion, the court will assign a briefing schedule and a final hearing date and time. If no one appears in opposition to the motion, the court will take up the merits of the motion.

3. 00-91272-A-7 CALVIN & MARY BIRD HEARING ON MOTION FOR  
WGM #1 RELIEF FROM AUTOMATIC STAY  
WASHINGTON MUTUAL BANK, FA VS. PART II  
7/13/00 [22]

**Final Ruling:** This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted in part pursuant to 11 U.S.C. § 362(d)(2) in order to permit the movant to conduct a nonjudicial

foreclosure sale and to obtain possession of the subject real property following the sale. All other relief is denied. The subject real property has a value of \$200,000 and is encumbered by a perfected deed of trust or mortgage in favor of the movant. That security interest secures a claim of \$185,968. After considering the junior lien of \$55,000, there is no equity and there is no evidence that the subject real property is necessary to a reorganization or that the trustee can administer the subject real property for the benefit of creditors. Fees and costs of \$675 or, if less, the amount actually billed to the movant by counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against the movant's collateral. This award may not be enforced against the debtor. However, if the debtor wishes to cure the loan default, these fees must be paid. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

4. 00-91084-A-7 KEVIN & CHRISTINA HENSLEY HEARING ON MOTION TO  
SAS #1 AVOID LIEN  
KEVIN & CHRISTINA HENSLEY VS. 6/12/00 [7]  
BENEFICIAL FINANCE

**Tentative Ruling:** The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(B). The respondent holds a nonpossessory, nonpurchase money security interest in household furnishings and goods owned by the debtor and used by the debtor's household as such. These items have been exempted by the debtor. There is no non-exempt equity. The fixing of the respondent's security interest and lien impairs the debtor's exemption and the fixing is avoided.

5. 00-91086-A-7 MARC & TERRI RODGERS HEARING ON MOTION TO  
SAS #1 AVOID LIEN ON DEBTORS' REAL  
MARC & TERRI RODGERS VS. PROPERTY  
6/20/00 [17]  
WELLS FARGO BANK N.A.

**Tentative Ruling:** The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of \$110,000 as of the date of the petition. The unavoidable liens total \$115,000. The debtor has an available exemption of \$7,250. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided. Although there is no equity after subtracting the unavoidable liens from the value of the property, the judicial lien is nonetheless avoidable because the debtor has exempted the property. See Higgins v. Household Finance Corp. (In re Higgins), 201 B.R. 965 (B.A.P. 9<sup>th</sup> Cir. 1996).

6. 00-92391-A-7 STEVEN & LORRETA MOORE  
AC #1  
WELLS FARGO HOME MORTGAGE,  
INC. VS.

HEARING ON MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
PART II  
7/5/00 [5]

**Tentative Ruling:** The motion is denied. The subject real property has a value of \$79,000 and is encumbered by a perfected deed of trust or mortgage in favor of the movant. That security interest secures a claim of \$76,767.34. Therefore, there is equity in the real property. Relief pursuant to 11 U.S.C. § 362(d)(2) will not lie because there is equity. As to relief under 11 U.S.C. § 362(d)(1), there is no evidence that the debtors have failed to pay post petition installments to the movant.